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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,682	11/20/2000	Petr Peterka	GIC-535	8417

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Barry R. Lipsitz
Attorney at Law
755 Main Street, Bldg. 8
Monroe, CT 06468

EXAMINER

BELIVEAU, SCOTT E

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/716,682

Applicant(s)

PETERKA, PETR

Examiner

Scott Beliveau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 7, 9, 11-15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☒ Claim(s) 5 and 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the step wherein the “conditions” are delivered to the receiver must be shown or the feature(s) canceled from the claim(s). It is the examiner’s understanding that the “conditions” may be provided alongside the permissions in step 320 in Figure 3 and as such a correction to the text label would overcome the objection. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 2, 4, 6, 7, and 8 are objected to because the phrase “said condition” lacks proper antecedent basis to the earlier recitation of “the condition of the receiver”. Appropriate correction is required.

Response to Arguments

3. Applicant's arguments with respect to claims 1 and 17 have been considered but are moot in view of the new ground(s) of rejection.
4. With respect to applicant's arguments pertaining to the Ahmad reference failing to disclose the limitations pertaining to the particular usage of a “current state of the receiver”, the examiner respectfully disagrees. As utilized in applicant's specification, the current state may indicate time (ex. claim 6). The rental contract of the Ahmad reference defines the conditions by which the rental may occur including those which indicate the period of time that a downloaded application may be utilized. In determining the period of usage, the system utilizes a dynamically changing condition such as a locally derived clock (Col 11, Lines 14-42) which is utilized in connection with determining if access to the receiver function associated with the downloaded application is permitted per the terms of the rental contract.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 6, 7, 9, 11-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thrift et al. (of record), in view of Gong (US Pat No. 6,047,377), and in further view of Ahmad (US Pat No. 5,925,127).

In consideration of claims 1 and 17, the Thrift et al. reference discloses method and means wherein a “digital television receiver” is operable to execute Java applets or “software applications” which are “provided to” the “receiver” and are “executable in response to an execution command” as provided by the user interactions. While the reference makes use of the Java™ API in conjunction with the downloaded applets/showlets, the reference does not explicitly disclose nor preclude that particular usage of a “security policy” or the usage of such in conjunction with the “condition of the receiver”.

The Gong reference discloses a method and apparatus for establishing and maintaining security rules in conjunction such as that utilized by received and executed “software applications” such as those associated with the JAVA™ programming language in order to control television “receiver functions” (Col 9, Lines 36-52; Figure 5; Col 13, Line 59 – Col 15, Line 7). As illustrated in conjunction with Figure 7, the Gong reference discloses a method whereupon an executed software application “provides a control signal for requesting access to the receiver function upon execution of said software application” [754]; and “in response to said control signal”, the receiver “determines whether an associated security policy of the software application contains a permission for the software application to access the receiver function” [760]. Subsequently, “if the security policy” [444] (Figure 5; Col 15,

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Line 54 – Col 16, Line 8) “contains said permission” the action is authorized or if the “security policy” [444] does not contain said permission, the “software application” is “prevented from . . . accessing the receiver function” [764/768] (Col 17, Line 33 – Col 19, Line 60). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the Gong teachings in conjunction with a “digital television receiver” such as that associated with the Java-enabled television of Thrift et al. for the purpose of providing a mean by which to implement security in conjunction such that downloaded applets are limited in their access to receiver functions in a manner that reduces the effort and in-depth knowledge required to modify permissions established for the sources of code (Gong: Col 1, Line 27 – Col 2, Line 49). The Gong et al. reference, however, does not particularly disclose the limitations of “receiving . . . from a headend data defining a condition of the receiver under which access to the receiver function by the software application is permitted” that “information from the headend . . . defining a security policy for said software application which contains a set of permissions is received”.

With respect to the particular receipt of “information” associated with a security policy file, as aforementioned, Gong et al. teaches the usage of a security policy file [444], but is silent as to how the file was derived/received. The examiner takes OFFICIAL NOTICE that it is notoriously well known in the art for a headend to deliver software to receivers or terminals in order to facilitate their operation and/or access control rights. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to deliver “information defining a security policy” from the “headend” for the

purpose of advantageously enabling the service provider with the ability to control access rights/privileges of the remote terminals operating on its network.

With respect to the particular usage of “receiving . . . data defining a condition of the receiver under which access to the receiver function by the software application is permitted”, the Ahmad reference describes a software based pay-per-use software module rental system wherein the software provider is operable to “provide data defining a condition of the receiver under which access to the receiver function by the software application is permitted” such as a particular duration of time in conjunction with the terms of use of the software and presuming the “security policy” contains such a permission, the embodiment “allows” or “prevents the software application from accessing the receiver function” on the further basis of “data indicative of a current state of the receiver” (Col 2, Line 11 – Col 3, Line 5; Col 11, Lines 1-42). Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the combined references so as to further utilize the run-time or “current state of the receiver” in conjunction with the further determination of the permission for the purpose of facilitating a business method wherein software applications may be rented for a set period of time (Ahmad: Col 1, Lines 61-65). For example, when taken in combination the reference would provide a method wherein a user may download an interactive Java™ applet to their television receiver on a rental basis wherein the security policy may defines application resource conditions to access resource functions (Gong et al.) that are only allowed pending the current state of the receiver as defined by the terms and conditions of the rental of the software application.

Claims 2 and 3 are rejected wherein the “condition indicates a conditional access state of the receiver” comprising an “authorization state” wherein the condition locally defines to which receiver functions the software application is “authorized” to perform.

Claim 4 is rejected wherein the “condition” implicitly “indicates a user state of the receiver” such that a user is operating the downloaded software.

Claim 6 is rejected, as aforementioned, wherein the “condition indicates . . . time” such that a particular module (Col 8, Lines 65-68).

Claim 7 is rejected wherein the “condition is defined, at least in part, by said software application” in so far as the downloaded software application of Ahmad is associated with particular usage criteria..

In consideration of claim 9, the Gong reference discloses that the “software application is downloadable to the receiver” via a network link [120] using a communication interface [118] such as a modem, however the reference does not explicitly disclose nor preclude that the aforementioned network link [120] is necessarily associated with a broadband television network (Col 5, Line 14 – Col 6, Line 9). Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize a “broadband television network” such as that associated with cable modem transmissions for the purpose of providing a means for transmitting/receiving software applications via a high-bandwidth delivery method.

Claim 11 is rejected wherein the “software application comprises a JAVA code” (Gong: Col 11, Lines 10-15).

Claim 12 is rejected wherein the “execution command is initiated by a user” in connection with the start of the execution of the rented program (Ahmad: Col 9, Lines 1-3).

Claim 13 is rejected wherein the “permission” is broadly “associated with a user of the receiver” given that a particular user requested for the software to be rented (Ahmad: Col 8, Lines 54-64) and a “user of the receiver” is operating the software so as to cause the particular permission to be invoked.

Claim 14 is rejected wherein the “condition is embedded in code that defines the permission” in conjunction with the policy file [444].

In consideration of claim 15, as aforementioned, the “software application” may be distributed via the Internet (Col 1, Lines 60-65; Col 5, Lines 47-61). The combined references, however, do not explicitly disclose nor preclude the distribution of such applications via “multicasting”. Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention so as to distribute the “software applications” via “multicasting” for the purpose of distributing the application software from a single host to a large audience or “receiver population” in a manner that conserves bandwidth and reduces traffic through the simultaneous delivery of the “software application” to multiple “receivers”.

Allowable Subject Matter

7. Claims 5 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In particular, the art as applied fails to disclose or suggest

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that the “user state” particularly comprises “at least one of: user preferences, a user password, or a user identifier” or that the “condition indicates that one of a channel and a group of channels is tuned by the receiver”.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made.

- The Carpenter (US Pat No. 6,745,245) reference discloses a system and method for using a conditional access system to modify access control information maintained at a set-top box.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 703-305-4907.

The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703-305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB
December 9, 2004


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600